TABLE OF CASES CITED

No. 1127

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

DIMAS YGNACIO YBARRA AMAYA, ET AL.,
Petitioners

vs.

STANOLIND OIL AND GAS COMPANY, ET AL.,
Respondents

REPLY OF RESPONDENTS TO PETITION FOR WRIT OF CERTIORARI

To the Honorable the Supreme Court of the United States:

Your Respondents respectfully file and submit this as their reply to the petition for writ of certiorari.

REPLY OF RESPONDENTS TO PETITIONERS' SPECIFICATION OF ERRORS NO. 2, REFERRED TO AS POINT 2 IN "REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT," PAGE 9 OF THE PETITION, AND RELEVANT TO QUESTION A OF THE "PIVOTOL QUESTIONS PRESENTED," PAGE 2 OF THE PETITION

The Treaty of Guadalupe Hidalgo nowhere, in Article VIII, or elsewhere, refers to territory as "ceded." The reference in Article VIII to "territories" is to "territories previously belonging to Mexico, and which remain for the future within the limits of the United States." The territories which would remain for the future within the limits of the United States "as defined

by the present treaty" are all lands north of the line running from the mouth of the Rio Grande River and up that river to the point where it strikes the southern boundary of New Mexico, thence westerly along the southern boundary of New Mexico, and then by other described boundaries to the Pacific Ocean. Obviously north of such line there was land which belonged to Mexico up to the time of the treaty and also land which did not belong to Mexico, but the general effect of the language used in the treaty was to establish non-claim by the Republic of Mexico to all land lying north of such boundary, both that which had belonged to Mexico, as well as that which had not belonged to Mexico up to the time of the treaty. There was no express cession by Mexico of any land, but the method used in defining the boundary was to relinquish claim both to the land which had belonged to Mexico and that which had not belonged to Mexico. Thus, it appears that what is important in determining whether the area between the Nueces and Rio Grande Rivers is subject to the provisions of Article VIII is not whether it was "ceded" by the treaty, but whether it belonged to Texas as a State of the United States at the time of the making of the treaty, or whether it belonged to the Republic of Mexico at that time. So far as the treaty is concerned, it made no distinction between that part of Texas lying between the Nueces and Rio Grande and that part of Texas lying north or east of the Nueces, with reference to the claim of Mexico to either of such areas or with reference to the time when either of such areas "previously belonged to Mexico." We know that at one time all of Texas, including that between the

Nueces and Rio Grande, as well as that north and east of the Nueces, had belonged to Mexico. Between the date December 19, 1836, on which Texas, by act of the Congress of her Republic, declared her southern boundary to be the Rio Grande River, and the date of the treaty, February 2, 1848, little more than eleven years had intervened, during which time the Republic of Mexico never recognized the Republic of Texas nor the State of Texas, nor had it relinquished claim to any part of the State of Texas, either that between the Rio Grande and Nueces Rivers or that north and east of the Nueces River. So far as the historical facts show, there was no difference during such period of approximately eleven years between the character of claim asserted by Mexico to the area between the Rio Grande and Nueces and that north and east of the Nueces. The fact of Mexico's non-recognition of any part of Texas, to the fullest extent it had ever been owned by Mexico, as free of the claim of Mexico is evidenced by the act of the Mexican Republic in withdrawing its ambassador to the United States when the annexation of Texas to the United States was made. The resolutions of annexation nowhere distinguish between that part of Texas lying north and east of the Nueces and that part lying between the Nueces and Rio Grande. Prior to the annexation, the Republic of Texas had declared her southern boundary to be the Rio Grande, and the conclusion must be reached that the Texas which was annexed as a state was one having the Rio Grande as its southern boundary.

We have the authority of this court in *McKinney vs. Saviego*, 59 U. S. 235, for the proposition that the con-

tracting parties in the treaty referred in Article VIII to no portion of the acknowledged limits of Texas, but to territories which had previously to the treaty belonged to Mexico. When the court in that opinion said that the Republic of Texas had many years before been acknowledged by the United States as existing separately and independently of Mexico, and as a separate and independent State it had been admitted to the Union, it must have meant a republic bounded according to the republic's own declaration, that is, on the south by the Rio Grande; for we see from the opinion that the court considered that the "territories" referred to in Article VIII were those which had previously to the treaty belonged to Mexico, and not those to which the Republic of Texas had acquired title many years before.

The Compromise Act of 1850 was a settlement between the State of Texas and the United States of the northern and western boundaries of Texas, and not the southern boundary, which had always been recognized by the United States as being the Rio Grande River.

Although some of the decisions of the Texas courts have referred to the area between the Rio Grande and Nueces Rivers as having been "ceded" by Mexico to the United States, they have uniformly recognized the fact to be that such area between the Rio Grande and Nueces did not belong to Mexico at the time of the treaty. See *State vs. Bustamente*, 47 Tex. 321, and *State vs. Sais*, 47 Tex. 307, by the Supreme Court of Texas, in which it was said that while the Mexican State of Tamaulipas exercised jurisdiction over the area between the Nueces and Rio Grande Rivers, at least until

the Act of the Congress of the Texas Republic of December 19, 1836, if not to 1846, at which time the claim of Texas to the Rio Grande as its boundary was perfected by acts of possession, that is, armed occupation of the area by the United States on behalf of Texas, from the last mentioned date such jurisdiction was lost to the State of Tamaulipas and was thereafter exercised by Texas; and also the full discussion of the same point in *Kennedy Pasture Company vs. State*, 111 Tex. 200, 231 S. W. 683, writ of certiorari denied by this court, in which the Supreme Court of Texas held that the wrongful de facto possession by Mexico of such area between the Nueces and Rio Grande came to a complete end when in 1846 United States troops in behalf of Texas occupied the territory and ousted the Mexicans from it.

The case of State of Texas vs. Balli and that of State of Texas vs. Gallardo, cited in Paragraph 2 of Petitioners' Specifications of Error, involved the point whether lands north of the Rio Grande, which had been titled by a state of the Mexican Republic prior to the declaration by the Congress of the Republic of Texas in 1836 of the Rio Grande as its boundary, were good as against the Mexican government, and it was held that by the terms of the treaty the new sovereign was bound to respect such titles. That would follow at any rate under the law of nations.

So far as this court is concerned, we think the point was decided by McKinney vs. Saviego that territory which had not belonged to Mexico at the date of the treaty was not subject to Article VIII, and this was reaffirmed in the court's opinion in *Basse v. City of*

Brownsville, 154 U. S. 610, denying certiorari, in a case involving land near the City of El Paso which lay between the Rio Grande and Nueces Rivers.

The trial court decided the fact to be that the land involved in the suit was not in an area ceded by the Republic of Texas to the United States. We submit that nothing said by Petitioners discloses error in such finding.

REPLY OF RESPONDENTS TO THE SPECIFICATION OF ERRORS ENCOMPASSED BY THE QUESTION PRESENTED AS QUESTION B, PAGE 2 OF PETITION, WHETHER THE STIPULATIONS CONTAINED IN THE LAST CLAUSE OF ARTICLE VIII OF THE TREATY OF GUADALUPE HIDALGO RENDER INOPERATIVE TEXAS STATUTES OF LIMITATION AS AGAINST THE PETITIONERS (GROUNDS 3 TO 15, BOTH INCLUSIVE, PAGES 10 TO 14 OF THE PETITION)

In any event, so far as concerns territory which undoubtedly had belonged to Mexico previously to the treaty, within the meaning of Article VIII of the treaty, territory now embraced in the States of New Mexico, Arizona, and California, there are sufficient decisions of the United States courts, including this court, to show that the treaty has not been considered, within the nearly one hundred years since it was ratified, as having set apart the lands in these territories owned by Mexicans not there established at the time of the treaty, their heirs and assigns, as still subject to be governed by the laws of Mexico. No such results as are here urged by

the Petitioners are held to follow from the language of Article VIII of the treaty.

The early procedure of the Congress after the treaty was to set up courts of private land claims to pass upon the validity of titles granted by Mexico, but a limitation of time was put upon the right of claimants under the Mexican title. This was the exercise of jurisdiction by the new sovereign and the application of its own laws to the territory, with no distinction drawn between owners who were established in Mexico at the time of the treaty and those who were established in the United States. The right of Congress to create a court to adjudicate upon such claims in the territory which is now the State of Arizona was not doubted. *Ely vs. United States*, 171 U. S. 220. Also, the Act of Congress of March 3, 1851, to ascertain and settle the private land claims in the State of California was exercise by the United States of authority and jurisdiction over lands in California, territory which had belonged to Mexico, providing that those claiming land by virtue of Mexican or Spanish grants were required to present their claims for validation within two years from the date of such Act, or such land would be considered part of the public domain of the United States. This was in the nature of a limitation upon Mexican titles, but it was never said that the United States could not enact such a law because of the language of Article VIII of the treaty, and it was held in *More vs. Steinbach*, 127 U S. 70, that such provision requiring the presentation of such claims was obligatory on claimants, that they were bound by the judgment of the court if confirmed by the courts of the United States on appeal. No exception

was made in the Act of Congress for those owning such lands who were not established in the territory at the time of the treaty.

This court held, *Henshaw vs. Bissell*, 85 U. S. 835, that a limitation statute of California passed in 1863 would not begin to run against the title derived from the Spanish or Mexican governments from the date it had been confirmed by the United States, but only from the date of consummation of the title by such confirmation. This was said to be because the legislation of Congress, imposing upon the claimant of title from the Spanish or Mexican governments the burden to present his claim for validation and to secure title, if found valid, was adopted by the government in the discharge of its treaty obligations, but the necessary implication from the decision is that if the Mexican title be confirmed, the land was thereafter subject to the limitation laws of California. There was no suggestion that if the Mexican title be found valid, the land would thereafter remain subject to the laws of Mexico so far as concerned limitation laws in the case of a claimant whose ancestor or predecessor was not established in the territory at the time of the treaty. What was held to be due the claimant was merely to have his title recognized if found to be good. This was also held in *Bottiller vs. Dominguez*, 130 U. S. 238, in which this court held against the contention that Article VIII of the treaty was violated by the Act of Congress requiring claimants of Mexican titles to present their claims to the Board of Land Commissioners within two years, and that the court would follow the statutory enactment of its own government.

The Texas courts have likewise sustained Texas statutes which set up procedures for testing the validity of titles having origin in Mexican or Spanish grants. *State vs. Sais*, 47 Tex. Rep. 307; *State vs. Russell*, 85 S. W. 288.

A New Mexico limitation statute in force in that territory since 1858, which was particularly applicable to ten years' possession under a deed purporting to convey lands granted by Spain, Mexico, or the United States, was held by this court not to be in violation of the Constitution of the United States and no taking of property without due process of law. There was no distinction made in the statute with regard to lands owned by Mexicans "not established there" at the time of the treaty. It was held there was nothing in the Constitution of the United States to prevent the statute from doing its work, which was to give title to him who had been in possession for ten years under a deed describing the land. The New Mexico limitation law considered in that case had the same effect as the Texas statute, that is to say, to vest title, precluding all claims.

The United States Circuit Court for the Tenth Circuit held that land which was subject to the provisions of Article VIII of the treaty was not exempted from ordinary taxes for governmental purposes, levied by the State of New Mexico. *Chadwick vs. Campbell*, 115 Fed (2) 401. The court said that the provisions of Article VIII merely guaranteed to Mexican owners equality in respect of such property with citizens of the United States owning similar property; and rather than creating an exemption from taxation, it suggests equality, and forbids discrimination.

There is, we believe, no sound reason to think that limitation laws which provide for the passage of title to another upon his adverse use, possession, and enjoyment of the land for a stated period are in violation of rights to or involve the failure to respect property. The Texas limitation statutes provide that when an action for the recovery of real estate is barred, the person having peaceable and adverse possession shall be held to have full title, precluding all claims. Article 5513, Vernon's Revised Civil Statutes of Texas. The title which becomes vested under the Texas limitation laws is a title by purchase. The title by purchase results from the lawful acquisition of real estate by any means whatever, except by descent. 51 *C. J.* 94. Adverse possession may be said to transfer the title as effectively as a conveyance from the owner; it may be considered as tantamount to a conveyance. *Toltec Ranch Co. vs. Cook*, 191 U. S. 532. The imposition by the State of a limitation law is not a violation of property rights, nor does it deprive one of property without due process of law, unless in its application to an existing right of action it unreasonably limits the opportunity to enforce that right by suit. *Wheeler vs. Jackson*, 137 U. S. 245. No complaint is made here, and certainly no proof made, that the Texas limitation laws are unreasonable in their periods of prescription.

The rule of construction given by this court to such treaty provisions as contained in the third paragraph of Article VIII of the Treaty of Guadalupe Hidalgo is that treaties are given such construction as tends to the common advantage of the contracting parties and to place them upon an equality, but not such as will put

aliens upon a more favorable footing than our own citizens. *Todok vs. Union State Bank of Harvard, Neb.*, 74 L. Ed. 956. In considering a Nebraska statute which required the wife's joinder in the conveyance of a homestead, under a contention that a citizen of Norway could convey the property, though homestead, without his wife's joinder, because of a treaty between Norway and the United States which provided that the subjects of the contracting parties in the respective states may freely dispose of their goods in favor of such persons as they think proper, the court said that notwithstanding the policy of Nebraska with respect to homesteads was established after the treaty, it was not to be supposed that the treaty intended to secure the right of disposition in any manner whatever regardless of reasonable regulations in accordance with the property law of the country of location, bearing upon aliens and citizens alike.

This court has held that laches may bar rights guaranteed under a treaty, *La Republique Francaise vs. Saratoga Vichy Spring Company*, 191 U. S. 427, holding that it could never have been intended by a treaty to put citizens of other countries on a more favorable footing than our own citizens, or to exempt them from the ordinary defenses that might be made by the party prosecuted.

The Circuit Court nowhere held, as argued in Point B of Petitioners' brief (Page 23), that upon the making of the treaty the laws of Mexico, as applied to lands in the territories mentioned under Article VIII, were immediately abrogated, as the court cited with approval

Leitensdorfer vs. Webb, 61 U. S. 891, holding that under the law of nations, after the substitution of a new supremacy, private relations remain in full force and unchanged except insofar as found to be in conflict with the Constitution and laws of the United States or with any regulation which the conquering and occupying authority should ordain. To the same effect is *Strother vs. Lucas*, 9 U. S. 72, in which it is said that after the conquest, rights of property are protected in the conquered country and held sacred and inviolable when ceded by treaty, with or without any stipulation to that effect, and the laws, whether in writing or evidenced by the usage and customs of the conquered or ceded country, continue in force until altered by the new sovereign. The third paragraph of Article VIII does no more than state the law of nations which would be applicable, as pointed out by these decisions, to the protection of property in a conquered country or that ceded by treaty, with or without stipulation to that effect. The obligation imposed by the principles of international law to respect property rights within an annexed territory is substantially that recognized by the treaty, *U. S. vs. O'Donnell*, 303 U. S. 501.

The Texas limitation laws of three, five, and ten years were adopted by the Congress of the Republic of Texas after the conquest, and these laws were republished and carried forward by the State of Texas after its admission into the union, as well as subsequently the twenty-five-year statute of limitations. These were regulations which the conquering authority ordained, and it cannot be said that the laws of limitation and

prescription of Mexico remained in force after so altered by the new sovereign.

The enactment by the new sovereign of laws directing all claimants under the former sovereign to file their claims before a board and in which the time for filing such claims is limited, and which are said to be laws analogous to acts of limitation, is within the authority of the new sovereign. *Strother vs. Lucas*, supra.

We believe these conclusions answer the Petitioners' Specifications of Error 5 to 9, inclusive, that the Republic of Texas and the State of Texas were without right under the treaty to enact its limitations laws, and that the Circuit Court was right in holding that there is nothing in the treaty that suggests that the property of Mexican citizens would not be subject to the valid and non-discriminatory property laws of the State of Texas.

The argument is made under Point C of the brief (Page 23) that the State of Texas had not the right to enact its limitation laws because it had no sovereignty over the territory until the consummation of the Compromise Act of September 9, 1850, between the United States and the State of Texas. Such Act of Congress, which, when agreed upon by the State of Texas, became a compact, is captioned "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and all her claims upon the United States, and to establish a territorial government for New Mexico."

The Act specifically dealt with the boundary of Texas on the north and also on the west, ending with the intersection of the parallel of 32° north latitude with the Rio Grande River, and while the description of boundary also runs from the last mentioned point with the channel of said river to the Gulf of Mexico, it is plain that the compact dealt only with the establishment of the northern and western boundaries of Texas. *United States vs. State of Texas*, 162 U. S. 1. No controversy ever arose between the United States and Texas with respect to the Rio Grande as a boundary, except with respect to that part of the present State of New Mexico lying east of the Rio Grande as that river runs north and south in New Mexico. The Supreme Court of Texas held in *Kennedy Pasture Company vs. State*, 111 Tex. 200, that upon the admission of Texas to the United States, the United States accepted the Rio Grande as the boundary between Texas and Mexico and perfected the sovereignty of Texas to the area between the Nueces and Rio Grande Rivers by taking armed occupation, before the Treaty of Guadalupe Hidalgo. In that case, certiorari was denied, 258 U S. 617. All connection of the United States with the area between the Nueces and Rio Grande Rivers ceased with the treaty. *Baldwin vs. Goldfrank*, 88 Tex. 249.

Under Point D, Page 26 of Petitioners' brief, relevant to Specifications of Error 10, 11, 12, and 13 of the petition, the argument is made that the purpose and necessity for the third paragraph of Article VIII of the treaty was to extend to the alien heirs and assigns of Mexicans "not established therein" the right to take

property in the territory by descent or contract, which would not otherwise be vouchsafed to them under the law of nations; and that such alien heirs and assigns were not under the law of nations entitled to the same respect for their property as were "the present owners." We have, however, the authority of this court, *Airhart vs Massieu*, 98 U. S. 213, for the construction of the Constitution and laws of the Republic of Texas in force at the time of the treaty that they permitted the citizen of Mexico the right to alienate his lands in Texas and to transmit the same to his heirs, also citizens of Mexico, and the right of Anna Massieu, an alien, to inherit through alien Mexicans was sustained under such Constitution and laws of Texas. It is hardly to be thought that the American commissioners, in drafting the treaty, and the United States Senate, in ratifying it, would consider it necessary to establish by the treaty any such novel doctrine as that areas of Texas should be set up free of the operation of Texas municipal laws, and subject only to Mexican municipal laws, in order to guarantee to the alien heirs and assigns of Mexican aliens rights which we see already existed under the law of nations and the Constitution and laws of the State of Texas.

If it could be said that the purpose of the last clause of Article VIII of the treaty was to inhibit the State of Texas from subsequently establishing by law the right of forfeiture of lands on account of alienage, that at least is a moot question here, as this is not a suit to escheat lands on account of alienage, and in passing, we may remark that, as held in Airhart vs. Massieu, and also in *Jones vs. McMasters*, 61 U. S. 605, the laws

of the Republic of Texas and of the State of Texas for the forfeiture of the lands of Mexicans because of alienage were provisional only, and not operative.

The proper reply, we think, to be made to Point E argued in Petitioners' brief (Page 41), applicable to Specification of Error No. 14 (Page 14 of the petition), is to refer to the opinion of the Circuit Court that a construction should be given Article VIII so as to avoid, if possible, a decision adjudging the treaty to be in conflict with the Constitution. Cases cited by Petitioners on the point are far from holding that a treaty may set up within the United States territories or types or classes of property which shall remain subject to the municipal laws of another sovereign. The cited case of *Hopkirk vs. Bell*, 3 Cranch 454, merely held that the running of a Virginia statute of limitation upon a debt contracted before the treaty was suspended by the treaty in favor of persons beyond the seas, the treaty involved in that case having provided for such suspension. The Treaty of Guadalupe Hidalgo makes no provision for the suspension of limitation laws, and in this connection it may be mentioned that the running of Texas limitation laws applicable to real property is not suspended by the absence from the country of the owner. We think it ought to be held that Article VIII of the treaty does not relieve any real property in Texas from the operation of the Texas municipal laws so as to accord with the general rule that the disposition of real property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. *U. S. vs. Fox*, 94

U. S. 315; *U. S. vs. Crosby*, 7 Cranch 115; *Oakey vs. Bennett*, 11 Howard 33.

We respectfully ask that the petition for certioiari be denied.

CHARLES D. TURNER,
FRANK M. KEMP,

B. D. TARLTON,
Attorneys for Respondents.

FRANK J. SCURLOCK,

PAUL A. McDERMOTT,
Of Counsel for Respondents.